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Report of the Advisory Committee on Administrative and Budgetary Questions

Addendum

Seventh report: conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions (ACABQ) has considered the report of the Secretary-General on the conditions of service and compensation for the members of the International Court of Justice (A/C.5/53/11) of 6 October 1998. The Committee also had before it the report of the Secretary-General on the conditions of service for the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/52/520) of 22 October 1997. During its consideration of the reports, the Advisory Committee met with representatives of the Secretary-General, and the Registrar of the Court, who provided additional information. The Advisory Committee had also exchanged views on this matter with members of the Court during its visit to The Hague in May 1998.

II. Conditions of service and compensation for members of the International Court of Justice

2. The report of the Secretary-General on the conditions of service and compensation for the members of the International Court of Justice was submitted pursuant to General Assembly resolution 50/216 of 23 December 1995. That report addresses the issue of the periodic reviews of the emoluments of the members of the Court and other conditions of service; includes a comprehensive review of the current pension scheme for the judges of

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the International Court of Justice, and an analysis of the practice of the Court with respect to Article 16, paragraph 1, of the Statute of the International Court of Justice; and addresses the issue of residence and non-residence status of the members of the Court.

Remuneration

3. The Advisory Committee recalls that the General Assembly, in its resolution 45/250 A of 21 December 1990, decided that, with effect from 1 January 1991, the annual salary of the members of the International Court of Justice would be US$ 145,000 per annum. In its resolutions 48/252 A and 50/216 (IV) of 26 May 1994 and 23 December 1995, respectively, the Assembly decided to maintain the salary of the members of the Court at the same level.

4. The Committee also notes that the system of floor/ceiling exchange rates, whose introduction by the International Civil Service Commission (ICSC) dates from 1987, continues to be applied to the salaries of members of the Court in order to protect their emoluments against a weakening/strengthening of the United States dollar vis-à-vis the Netherlands guilder, in accordance with the terms of General Assembly resolution 48/252 A. Based on this methodology, the floor/ceiling rates are set at 4 per cent below and 4 per cent above the average exchange rate of the previous year. Accordingly, the floor/ceiling rates used for the years 1996 and 1997 were 1.75 and 1.89 guilders per dollar, based on the average exchange rate of 1.68 guilders for 1995 and 1.68 guilders for 1996. As indicated in paragraph 14 of the report of the Secretary-General on conditions of service and compensation for members of the Court, in view of the strengthening of the dollar during 1997, the floor/ceiling rates have been revised to 1.86 and 2.02 guilders per dollar for 1998, based on the average exchange rate for 1997 of 1.94 guilders to US$ 1.00.

5. The Secretary-General, in paragraph 16 of his report, indicates, however, that, although the floor/ceiling mechanism has served to partially offset fluctuations related to the exchange rates, the emoluments of the members of the Court have experienced a diminution in real value since 1991, owing to the increase in the cost of living in the Netherlands. The Committee was informed that the consumer price index (CPI) had increased from 100 in January 1991 to 119 in December 1997 – a 19 per cent increase. Moreover, as of August 1998, the CPI was at 120.2 – a 20 per cent increase since January 1991. This has been somewhat offset by a 5.4 per cent increase in the floor/ceiling exchange rates, as indicated in paragraph 18 of the above-mentioned report.

6. The Secretary-General is therefore proposing to restore the real level of emoluments of the members of the Court by increasing their level of annual remuneration by $19,500, or 13.4 per cent, from the current level of $145,000 to $164,500 (see paras. 18–19 of document A/C.5/53/11). The floor/ceiling mechanism would continue to be applied in order to protect their emoluments from the weakening/strengthening of the exchange rate.

7. The Advisory Committee recalls that in the context of its review, in 1990, of the emoluments and conditions of service of the members of the Court, it recommended in its report A/48/7/Add.6, the recommendation being endorsed by the General Assembly in its resolution 48/252 A, that there should be no cost-of-living adjustment or post adjustment factor, emphasizing that the system of emoluments and conditions of service applicable to members of the Court should be simple and distinct from any other in the United Nations system. However, while being *sui generis*, they cannot be considered in isolation. In addition to the information contained in the report of the Secretary-General (A/C.5/53/11), the Advisory Committee received information on the gross emoluments of officials of the Netherlands and national judiciaries of other countries.

8. After careful consideration and analysis of the proposal of the Secretary-General, and taking into account the increase in the CPI in The Hague since the last salary increase granted by the General Assembly in 1990, the Advisory Committee recommends that the annual salary of members of the Court be set at $160,000, effective 1 January 1999, with the next review to take place no later than three years from 1 January 1999. The amount recommended by the Advisory Committee takes into account that the practice in the United Nations has been to adjust remuneration to a level somewhat less than 100 per cent with respect to the movement of the CPI.

9. The Advisory Committee points out that the financial implications, for the programme budget for the biennium 1998–1999, of its recommendation to increase the annual salary of the members of the Court to $160,000, would amount to $225,000 for 1999, instead of the amount of $292,500 indicated in the proposal of the Secretary-General (see table 6 of document A/C.5/53/11).

Other conditions of service

10. The Advisory Committee notes that the Secretary-General does not propose any change in the current level of special allowances of the President of the Court and the Vice-President when acting as President, or in the arrangements regarding the compensation of ad hoc judges. The Advisory Committee notes, however, that any change in the emoluments of the judges of the Court will directly impact on the remuneration of the ad hoc judges who receive, for each day they exercise their functions, one three-hundred-and-sixty-fifth of the annual salary payable at the time to a member of the Court (see para. 25 of document A/C.5/53/11). The financial implications of the proposal of the Secretary-General, based on an increase in the emoluments of the members of the Court to $164,500, would amount to an additional requirement of $38,500 as concerns the salaries of ad hoc judges (see table 6 of document A/C.5/53/11). Based on an increase to $160,000 in the annual salary of the members of the Court, as recommended by the Advisory Committee, the additional requirements related to the salaries of ad hoc judges for 1999 are estimated at $30,000.

11. The Advisory Committee notes that the Secretary-General, in paragraphs 30 and 31 of his report on conditions of service and compensation for members of the Court, proposes that the increase in the level of the education grant (including for disabled children) applicable to staff in the Professional and higher categories approved by the General Assembly in its resolution 51/216 (IV), effective 1 January 1997, be extended to the members of the Court as from 1 January 1998. It is also proposed that any decision taken by the Assembly at its fifty-third session in response to ICSC recommendations to update current levels of the education grant or change the provisions regarding disabled children also be extended to members of the Court. The Committee notes that the programme budget implications for 1998–1999 of the education grant increase are estimated at $4,200, as indicated in the information provided in table 6 of the report of the Secretary-General. The Advisory Committee recommends that these proposals be approved.

Pension

12. The Advisory Committee recalls that in order to correct the anomaly of a disproportionate increase in pensions, as a result of the salary increase granted to the members of the Court effective 1 January 1991, the Advisory Committee recommended at the time that the pension of the judges no longer be expressed as a percentage of their salary.

In accordance with the terms of General Assembly resolution 45/250 B, of 21 December 1990, the pension entitlement of the members of the International Court of Justice was changed to a fixed amount, effective 1 January 1991 (US$ 50,000 for a judge who had served a full nine-year term).

13. The Advisory Committee further recalls that, in its report submitted to the General Assembly at its forty-ninth session (A/49/7/Add.11), it recommended that the Secretary-General include a comprehensive review of the pension scheme for the members of the Court in his report, to be submitted to the Assembly at its fiftieth session. The subsequent report of the Secretary-General (A/C.5/50/18) included the full text of a review commissioned to a consulting actuary and the recommendations of the Secretary-General in this regard. However, the Committee pointed out that the rationale for the recommendations of the Secretary-General needed further analysis, explanation and cross-referencing to the report of the consulting actuary (A/50/7/Add.11, paras. 11–15). The Assembly, in its resolution 50/216 (IV), requested the Secretary-General to re-examine the scheme, taking full account of the request of the Advisory Committee.

14. The Advisory Committee notes that the Secretary-General, in paragraph 38 of his report (A/C.5/53/11), has undertaken an analysis, presented in four parts, of the consulting actuary's recommendations relating to the pension scheme. Upon this basis, he makes a series of recommendations in paragraph 40 regarding the pension scheme, which would basically restore the pre-1991 regime: the annual pension of a judge would be based on half the annual salary of a judge who had completed a full nine-year term, with a proportional reduction for a judge who had not completed a full term. A re-elected judge would receive one three-hundredth of his pension benefit for each further month of service, up to a maximum pension of two thirds his annual salary. The pension scheme would be non-contributory and an actuarial reduction factor, at a rate of one half of 1 per cent per month, would be applied in case of early retirement. In addition, the Secretary-General recommends a pension equal to 60 per cent of a judge's pension for surviving spouses and, upon remarriage, the granting of a lump sum equal to twice the amount of the spouse's current annual benefit as a final settlement to surviving spouses.

15. The Advisory Committee agrees with the recommendations made by the Secretary-General in paragraph 40 (a), (c), (d) and (f). However, as for paragraph 40 (b), the Advisory Committee recommends a proportional reduction for a judge who has not completed a full nine-year term, but does not recommend any increase for service beyond nine years (see paras. 18 and 19 below). With regard to paragraph 40 (e) the Advisory Committee recommends that the 50 per cent basis also be applied to surviving spouses pensions.

16. In paragraph 41, the Secretary-General proposes to implement in two stages his recommendation to base the retirement pension at half the annual salary, in order to avoid a disproportionate increase in pension, with half to come into force as of 1 January 1999 and half as of 1 January 2000. As indicated therein, the pension benefit would be increased from $50,000 to $66,125, effective 1 January 1999, and set at 50 per cent of the annual salary, effective 1 January 2000.

17. The Advisory Committee, however, is of the opinion that it would be more desirable to implement the Secretary-General's recommendation in three stages instead of two: the first one, effective 1 January 1999, would increase the pension benefit by 20 per cent to $60,000; the second one, effective 1 January 2000, would increase the level another 16.7 per cent to $70,000; and the last one, effective 1 January 2001, would increase the level by a further 14.3 per cent to $80,000.

18. The Advisory Committee points out that if this formula is applied to the annual salary of $160,000 recommended by the Committee in paragraph 8 above, the pension benefit would be $80,000 per year. Under the circumstances, the Committee does not believe it is necessary to continue current provisions affecting pension benefits for judicial service in excess of nine years, especially since the Court pension scheme is non-contributory. Moreover, owing to cost-of-living adjustments in salary in the subsequent years, a judge who had served more than one term upon retirement would receive the same eventual increase in pension as would a judge already retired (see para. 21 below).

19. The recommendation of the Advisory Committee in paragraph 15 above, with regard to the pension benefit, represents a departure from current practice in that there would no longer be an increase in pension benefit for re-elected judges. As such, if the recommendation of the Advisory Committee is accepted, it should be applied with prospective effect. Thus, serving judges in office prior to 1 January 1999, who have been or are re-elected, should continue to be entitled to receive one three-hundredth of the pension benefit for each further month of service past nine years, up to a maximum pension of two thirds of annual salary. The recommendation of the Advisory Committee in paragraph 15 above would apply only to judges elected to terms commencing after 31 December 1998.

20. The Advisory Committee also recommends that pensions in payment be automatically revised by the same percentage and at the same date as salary adjustments, instead of pension entitlements as currently applied.

21. This recommendation, if accepted, would require a revision of article 7, paragraph 2, of the Pension Scheme Regulations for Members of the International Court of Justice. That provision stipulates that pensions in payment shall automatically be revised by the same percentage and at the same date as pension entitlements. The recommendation of the Advisory Committee, to link changes in pensions in payments to changes in salary, is based on the consideration that a pension entitlement is established at the time of retirement and the conditions of service in effect at that time. Subsequently, the purchasing power of the pension entitlement should be maintained through adjustments in response to changes in the cost of living. The Advisory Committee is of the opinion that this is best achieved through a link to salary, which is adjusted from time to time to reflect changes in the cost of living. Application of this recommendation of the Advisory Committee to current pensions in payment would result in a 10.3 per cent increase in these payments. For this reason, the Advisory Committee does not believe it is necessary to apply this recommendation prospectively only, since to do so would only result in a 60 per cent increase for current pensioners, which, in the opinion of the Advisory Committee would be disproportionate.

22. The financial implications for the biennium 1998–1999 of the proposal of the Secretary-General, indicated in table 6 of his report, amount to $391,200. The financial implications of the recommendation of the Advisory Committee would amount to $82,500, including the provision of surviving spouse pensions at 50 per cent. For the programme budget for the biennium 2000–2001, the financial implications over the level of the biennium 1998–1999 related to pensions, including surviving spouses, have been estimated at $204,600.

Analysis of the practice of the Court with respect to Article 16, paragraph 1, of the Statute of the International Court of Justice

23. The Committee notes that paragraphs 43–52 of the report (A/C.5/53/11) contain an analysis of the practice of the Court regarding the application of Article 16, paragraph 1, of the Statute of the Court in response to ACABQ's comments and the General Assembly's request. The Committee further notes that the Court, in clarification of its practice under Article 16 of the Statute, and in response to its own concerns as well as those of the Advisory Committee, adopted a new directive which is contained in paragraph 52 of the report.

Residence and non-residence status of the members of the Court

24. In paragraph 6 of its report A/50/7/Add.11, the Advisory Committee recommended "that the Secretary-General address the issue of residence and non-residence status of the members of the Court as it impacts on their salary and other conditions of service, as well as the need to provide rules and procedures that regulate the administration of the benefits of the members of the Court". The Advisory Committee notes that the Secretary-General addresses the matter in paragraphs 53–59 of his report (A/C.5/53/11) and provides certain clarifications. In addition, the Advisory Committee welcomes the inclusion of the Court's own view on residence status as contained in paragraph 59 of document A/C.5/53/11.

Financial implications

25. The programme budget implications of the Secretary-General's recommendations for the biennium 1998–1999, estimated at a total of $726,400 are indicated in table 6 of document A/C.5/53/11. If the General Assembly decided to endorse the recommendations of the Advisory Committee, the financial implications as compared with those of the proposal of the Secretary-General would be as follows (table 1):

Table 1
Programme budget implications, 1998–1999
(United States dollars)

	A/C.5/53/11	*ACABQ recommendation*
Salary increase	292 500	225 000
Increase in the emoluments of ad hoc judges	38 500	30 000
Education grant increase	4 200	4 200
Pensions	391 200	82 500
Total	**726 400**	**341 700**

26. The Committee concurs with the Secretary-General (see para. 61 of A/C.5/53/11) that the emoluments of the ad hoc judges would be governed by the provisions of paragraph 1 (b) (i) of General Assembly resolution 52/223 of 22 December 1997 on unforeseen and extraordinary expenses for the biennium 1998–1999. The balance of the additional requirements, arising from the increase in the annual salary and the costs of educating children of members of the Court, as well as the additional pension payments in respect of former judges and widows of judges for the biennium 1998–1999, relate to

inflation and should be treated accordingly, that is to say, outside the procedure for the use of the contingency fund and should be reported in the performance report on the programme budget for the biennium 1998–1999.

III. Conditions of service of the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

27. The Secretary-General, in paragraphs 63 and 64 of his report (A/C.5/53/11), refers to the terms and conditions of service of the judges of the International Tribunal for the Former Yugoslavia, which, according to Article 13, paragraph 4, of the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, are those of the judges of the Court, and those of the International Criminal Tribunal for Rwanda, which according to Article 12, paragraph 5, are those of the International Tribunal for the Former Yugoslavia. The report further indicates that the General Assembly, in its review of the report of the Secretary-General on the subject (A/52/520), upon the recommendation of the Advisory Committee, agreed in its resolutions 52/217 and 52/218, both of 22 December 1997, to defer consideration of the conditions of the pension entitlement for the members of the two tribunals until the review on the emoluments and pension scheme of the members of the International Court of Justice.

28. Table 7 of the report of the Secretary-General (A/C.5/53/11) indicates the financial implications for the proposed resource requirements for 1999 for both tribunals, were the General Assembly to approve the proposals contained in paragraphs 19, 25, 30, 31, 40 and 41 of that report. With regard to emoluments, the additional amount would be $273,000 for the International Tribunal for the Former Yugoslavia, and $175,500 for the International Criminal Tribunal for Rwanda; and with regard to pensions these additional amounts would be $49,600 for the International Tribunal for the Former Yugoslavia, and $8,800 for the International Criminal Tribunal for Rwanda (see table 2).

Table 2
Financial implications for the proposed resource requirements for 1999 for the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda
(United States dollars)

	International Tribunal for the Former Yugoslavia		*International Criminal Tribunal for Rwanda*	
	A/C.5/53/11	*ACABQ*	*A/C.5/53/11*	*ACABQ*
Emoluments	273 000	210 000	175 500	135 000
Relocation allowance	—	—	9 000	6 900
Pensions	49 600	9 700	8 800	5 400
Total	**322 600**	**219 700**	**193 300**	**147 300**

29. However, on the basis of the recommendation of the Advisory Committee, made in paragraph 8 above, to increase the annual salary for the members of the International Court of Justice to $160,000, the consequential increase in salary for the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda,

would result in additional financial requirements of $210,000 and $135,000, respectively, for the year 1999. The pension benefit for the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, would be based on that applicable to the judges of the International Court of Justice, prorated to account for the difference in length in the terms of appointment, that is to say, nine years for the members of the International Court of Justice versus four years for the judges of both tribunals. On this basis, and using the phase-in formula recommended by the Advisory Committee for the judges of the International Court of Justice, in paragraph 17 above, the retirement allowance for the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda having served a full four-year term, would rise to $35,500 by 1 January 2001 for a judge who had served a full four-year term. The adoption of a pension scheme for the judges of both tribunals would result in additional requirements for the year 1999, of $9,700 for the International Tribunal for the Former Yugoslavia and $5,400 for the International Criminal Tribunal for Rwanda.

30. For the years 2000 and 2001, the financial implications over the 1998 levels related to pensions, including surviving spouses, have been estimated at $9,700 per annum for the International Tribunal for the Former Yugoslavia, and $9,000 per annum for the International Criminal Tribunal for Rwanda.

IV. Next comprehensive review

31. In paragraph 66 of document A/C.5/53/11, the Secretary-General proposes to undertake the next comprehensive review of the conditions of service of the members of International Court of Justice in the year 2001, in the context of the fifty-sixth session of the General Assembly, should the Assembly decide to continue the three-year review cycle. The Advisory Committee believes that the three-year review cycle, established by the Assembly in its resolution 45/250 A of 21 December 1990, is still the most appropriate one.